

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Civil Rights Center of South Dakota and
Michael Hunter,

Case No. 21-CV-0732 (MJD/ECW)

Plaintiffs,

v.

REPORT AND RECOMMENDATION

Unknown Named Director of Minnesota
Department of Public Safety; Jason
Ravnsborg; Bob Ferguson; Wayne
Stenehjem; Keith Ellison; Honorable
Merrick Garland; and All Others in Active
Concert,

Defendants.

In an order dated March 24, 2021, this Court denied the application to proceed *in forma pauperis* (“IFP”) of plaintiff Michael Hunter on the grounds that Hunter is ineligible to proceed IFP as long as plaintiff Civil Rights Center of South Dakota remained a party to this action. (*See* Dkt. 6.) Hunter was given 20 days to either pay the filing fee for this matter or, alternatively, voluntarily dismiss the Civil Rights Center of South Dakota and submit an amended IFP application, failing which it would be recommended that this action be dismissed without prejudice for failure to prosecute. *See* Fed. R. Civ. P. 41(b).

That deadline has now passed, and Hunter has neither paid the filing fee nor voluntarily dismissed the Civil Rights Center of South Dakota — in fact, documents have been submitted by Hunter subsequent to this Court’s March 24 order that continue to list

the Civil Rights Center of South Dakota as a party to this action. (See Dkts. 7 & 8.)

Because the Civil Rights Center of South Dakota remains a party, the filing fee for this action must be paid. Because the fee has not been paid, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute.¹ See *Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein,
IT IS HEREBY RECOMMENDED THAT:

1. This action be DISMISSED WITHOUT PREJUDICE under Fed. R. Civ. P. 41(b) for failure to prosecute.
2. The motions for a temporary restraining order filed by plaintiffs Michael Hunter and the Civil Rights Center of South Dakota (Dkts. 4 & 7) be

¹ This Court has not reached the merits of the Complaint submitted by Hunter and the Civil Rights Center of South Dakota due to plaintiffs' failure to comply with this Court's March 24 Order. This Court notes, however, that the Complaint is premised on the allegation that state licensing requirements and other restrictions on the right to operate a motor vehicle are broadly unconstitutional. But "[i]t is well-established that regulation of driving through requiring a driver's license is not an unconstitutional impairment of one's right to travel." *Waldorf v. Dayton*, No. 17-CV-0107 (JRT/LIB), 2017 WL 2729565, at *14 (D. Minn. June 6, 2017). Had Hunter proceeded as lone plaintiff and reapplied for IFP status, it is overwhelmingly doubtful that this matter would have survived review under 28 U.S.C. § 1915(e)(2)(B).

DENIED AS MOOT in light of the recommendation of dismissal for failure to prosecute.

Dated: April 26, 2021

s/Elizabeth Cowan Wright
ELIZABETH COWAN WRIGHT
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).